of contempt and directing that petitioner's appeal from the money judgment be dismissed unless it purge itself within 15 days. The appeal to this court was dismissed November 16, 1953, for lack of a substantial federal question. *National Union, etc. v. Arnold, et al.*, 346 U. S. 881, 98 L.Ed. (Ad. Op.) 80, 74 S.Ct. 136.

While petitioner and Harris had taken a joint appeal to it, the Washington Supreme Court refused to dismiss the whole appeal but separately docketed the Harris appeal for argument (R. 52). Upon the Harris appeal the money judgment was affirmed February 2, 1954. The opinion will be published in Vol. 144 of the Washington Supreme Court advance sheets.

Since certiorari is discretionary, we believe this court should know that, while all of the foregoing has been going on, petitioner has staved off suit in California on the theory that the Washington judgment has not been final pending appeal, and that petitioner has so dissipated its assets that its apparent assets do not amount to a fraction of the judgment (R. 45).

## REASONS FOR DENYING THE WRIT

**1. Petitioner Did Not Raise the Federal Questions It Now Argues:**

For the reasons already mentioned under discussion of this court's jurisdiction, no federal question, presently urged, was adequately raised by petitioner.

**2. Petitioner Made No Claim to Support Its Present Argument that It Has Been Denied Equal Protection of Laws:**

As we have pointed out in our discussion of jurisdiction, if any Federal question now argued by petitioner was adequately raised, it was only the due process question, and petitioner's present argument under the equal protection clause is not supported by an adequate claim in the state court.

**3. Due Process Does Not Embrace the Right of Appeal:**

To invoke the due process clause, petitioner now contends that deprivation of its right of appeal denies it due process. This is groundless, because "due process does not comprehend the right of appeal." *District of Columbia v. Clawans*, 300 U.S. 613, 81 L.Ed. 843, 847, 57 S.Ct. 660.

12 Am. Jur. 328, Section 638;

*Reetz v. Michigan*, 188 U.S. 505, 47 L.ed. 563, 23 S.Ct. 390;

*Pittsburgh C.C. and St. Louis R.R. Co. v. Backus*, 154 U.S. 421, 38 L.ed. 1031, 14 S.Ct. 1114;

*McKane v. Durston*, 153 U.S. 684, 38 L.ed. 867, 14 S.Ct. 913.

Petitioner does not claim that it was denied a full hearing in the trial court. In fact, there was a full dress jury trial during which petitioner was represented by able counsel.

By express declaration of the court, *Hovey v. Elliott*, 167 U.S. 409, 444, 42 L.ed. 215, 230, 17 S.Ct. 841, upon which petitioner relies, is not applicable here:

> "Whether in the exercise of its power to punish for a contempt a court would be justified in refusing to permit one in contempt from availing himself of a right granted by statute, where the refusal did not involve the fundamental right of one summoned in a cause to be heard in his defense, and where the one in contempt was an actor invoking the right allowed by statute, is a question not involved in this suit. The right which was here denied by rejecting the answer and taking the bill for confessed because of the contempt involved an essential element of due process of law, and our opinion is therefore exclusively confined to the case before us."

**4. The Contempt May Be Treated as a Conclusive Admission of Lack of Merit in Petitioner's Appeal:**

Respondents argued to the State Supreme Court that petitioner's contempt was a conclusive admission that its appeal was without merit, since it would not deliver assets to an officer of the court for safe keeping (R. 48-49). The order of the court would simply have preserved the assets in question until the outcome of petitioner's appeal. Respondents proposed this (R. 49), and, aside from respondents' proposal, a receiver would not of course pay a judgment which was subject to appeal, unless he should be authorized

to take over the appeal and should decide that the appeal was without merit, and then only with court approval. The receiver was not authorized to take over any assets or functions of petitioner except to receive $298,000.00 in Government bonds (R. 14-16). The flagrant violation of such an order is a rather obvious admission that the appeal was without merit, because petitioner was willing to place itself in contempt to avoid staking any of its assets on the outcome of its appeal. Full force and effect may be given to such an admission, even where (not as here) the result is to deny a hearing altogether.

*Hammond Packing Co. v. Arkansas*, 212 U.S. 322, 53 L.ed. 530, 29 S.Ct. 370;

*Lawson v. Black Diamond Coal Mining Co.*, 44 Wash. 26, 86 Pac. 1120.

**5. Petitioner Has Not Been Denied Equal Protection of Laws:**

Assuming, for argument, that this question has been raised, there is no reason to suppose that petitioner has been arbitrarily classified nor that other appellants who place themselves in petitioner's position of contempt will not be treated in the identical way that petitioner has been treated.

Equal protection does not mean indiscriminate operation of laws, and persons in various relations may be variously treated. *Magoun v. Illinois Trust etc. Bank*, 170 U.S. 283, 42 L.ed. 1037, 18 S.Ct. 594. Things which are different in fact or opinion need not be treated as though they were the same. *Tigner v. Texas*, 310 U.S. 141, 84 L.ed. 1124, 60 S.Ct. 879. The clause

means that the rights of all persons rest on the same rule under similar circumstances. *Hartford Steam Boiler Inspection and Insurance Co. v. Harrison*, 301 U.S. 459, 81 L.ed. 1223, 57 S.Ct. 838. The right to equal protection is not denied when the same law or course of procedure is applicable to any other person under similar circumstances and conditions. *Tinsley v. Anderson*, 171 U.S. 108, 43 L.ed. 91, 18 S.Ct. 805.

It is apparent that the state court's rule of decision does not single out petitioner in an arbitrary or whimsical manner, nor does it create an arbitrary or whimsical classification including petitioner.

## CONCLUSION

The rule of decision applied to petitioner bears a reasonable relation to legitimate state interests. The relationship has been forcefully, if not shockingly, presented by petitioner's conduct and contentions. Petitioner has demonstrated a most sensitive awareness of its own legal rights. On the other hand, it obviously does not conceive that they are relative. And it is apparently blind to the concept that the enforcement and collection of judgments are parts of due process of law. By flaunting the state court's order for delivery of assets to the court-appointed receiver and by dissipating its assets pending appeal, it has attempted to make it impossible for respondents ever to enforce and collect their judgment. The violation of the court's order for delivery of bonds was a contemptuous interference with due process of law. Petitioner's Constitutional rights must be respected, but, as we suggested to the state Supreme Court, petitioner has no Constitutional right to emasculate the judicial system.

Respectfully submitted,

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